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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 JOEL ENRIQUE RIVERA PALMA,)
09 Petitioner,) CASE NO. C13-1937-JLR-MAT
10 v.) REPORT AND RECOMMENDATION
11 NATALIE ASHER, Field Office Director,)
12 Respondent.)
13)
14)

15 I. INTRODUCTION AND SUMMARY CONCLUSION

16 Petitioner Joel Enrique Rivera Palma has filed a *pro se* habeas corpus petition under 28
17 U.S.C. § 2241, contending, among other things, that his detention without bond by U.S.
18 Immigration and Customs Enforcement (“ICE”) violates the Due Process Clause of the Fifth
19 Amendment. Dkt. 3. He asks the Court to direct the Immigration Court and ICE to issue a
20 bond in a reasonable amount. *Id.* at 1. Respondent has moved the Court to dismiss
21 petitioner’s habeas petition, asserting that his detention is lawful. Dkt. 8. Petitioner did not
22 respond to the motion to dismiss. Having considered the parties’ submissions and the

01 governing law, the Court recommends that petitioner's habeas petition be DENIED,
02 respondent's motion to dismiss be GRANTED, and this case be DISMISSED with prejudice.

03 II. BACKGROUND

04 Petitioner is a native and citizen of Mexico. Dkt. 9-1 at 2. Petitioner came to the
05 attention of ICE on or about June 19, 2013, after being arrested for Driving Under the Influence.
06 *Id.* at 3. On July 30, 2013, he was released into ICE custody after being convicted and
07 sentenced to time served. *See id.* at 2-3. Also on July 30, 2013, petitioner was served with a
08 Notice to Appear, charging him as subject to removal under 8 U.S.C. § 1182(a)(6)(A)(i) ("An
09 alien present in the United States without being admitted or paroled, or who arrives in the
10 United States at any time or place other than as designated by the Attorney General, is
11 inadmissible."), and ICE made an initial decision that petitioner would be detained during his
12 removal proceedings. Dkt. 9-1 at 6-7, 11.

13 Petitioner requested review of this decision, and on September 17, 2013, an Immigration
14 Judge ("IJ") held an individual bond hearing and denied bond, finding petitioner a danger to the
15 community. *Id.* at 14, 16. Petitioner waived appeal to the Board of Immigration Appeals
16 ("BIA"). *Id.* at 14.

17 On October 28, 2013, petitioner initiated the instant action. *See* Dkt. 1. He remains
18 detained at the Northwest Detention Center pending the completion of his removal proceedings.

19 III. DISCUSSION

20 Petitioner brings this action pursuant to 28 U.S.C. § 2241, which authorizes the district
21 court to grant a writ a habeas corpus whenever a petitioner is "in custody in violation of the
22 Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The record

01 shows the statutory authority for petitioner’s detention is 8 U.S.C. § 1226(a). Dkt. 9-1 at 14,
02 16. Section 1226(a) provides the framework for the arrest, detention, and release of aliens in
03 removal proceedings. That provision provides the Attorney General with discretionary
04 authority to release an alien on bond or conditional parole pending the completion of removal
05 proceedings. *See id.* Section 1226(a) states in relevant part:

06 On a warrant issued by the Attorney General, an alien may be arrested and
07 detained pending a decision on whether the alien is to be removed from the
08 United States. Except as provided in subsection (c) of this section and
09 pending such decision, the Attorney General –

(1) may continue to detain the arrested alien; and

(2) may release the alien on –

(A) bond of at least \$1,500 with security approved by, and containing
conditions prescribed by, the Attorney General; or

(B) conditional parole . . .

13 8 U.S.C. § 1226(a).

14 When an alien is arrested and taken into immigration custody, ICE makes an initial
15 custody determination, including the setting of bond. *See* 8 C.F.R. § 236.1. After the initial
16 custody determination, the alien may request a bond redetermination by an IJ. *Id.* If the IJ
17 denies bond, the alien may appeal the IJ’s bond determination to the BIA. 8 C.F.R. § 236.1.

18 At the bond hearing, the burden is on the detainee to show to the satisfaction of the IJ
19 that he warrants release on bond. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). In
20 making a bond decision, an IJ “must consider whether an alien who seeks a change in custody
21 status is a threat to national security, a danger to the community at large, likely to abscond, or
22 otherwise a poor bail risk.” *Id.* An IJ may also consider any number of discretionary factors,

01 including:

02 (1) whether the alien has a fixed address in the United States; (2) the alien's
03 length of residence in the United States; (3) the alien's family ties in the United
04 States, and whether they may entitle the alien to reside permanently in the United
05 States in the future; (4) the alien's employment history; (5) the alien's record of
06 appearance in court; (6) the alien's criminal record, including the extensiveness
of criminal activity, the recency of such activity, and the seriousness of the
offenses; (7) the alien's history of immigration violations; (8) any attempts by the
alien to flee persecution or otherwise escape authorities, and (9) the alien's
manner of entry to the United States.

07 *Id.*

08 In this case, the record shows that petitioner received a bond redetermination hearing on
09 September 17, 2013, before an IJ, who reviewed petitioner's custody status and determined that
10 he should remain detained pending completion of his removal proceedings because he is a
11 danger to the community. Dkt. 9-1 at 11, 14, 16. Petitioner waived appeal of the IJ's bond
12 decision to the BIA. *Id.* at 14. Thus, petitioner has received all of the benefits of due process
13 to which he is entitled. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1066 (9th Cir. 2008). In
14 short, he has failed to show that he is being held in violation constitutional or statutory
15 authority.

16 Petitioner nevertheless argues the denial of a bond violated due process because he is
17 not a flight risk, the IJ abused her discretion in denying bond, and the merits of his case establish
18 that a bond should have been granted. Dkt. 3 at 1-2. These contentions, however, do not
19 establish a due process violation; rather, they merely challenge the IJ's discretionary judgment,
20 which the Court cannot disturb here. *See Prieto-Romero*, 534 F.3d at 1058 (“[An] alien may
21 appeal the IJ's bond decision to the BIA, *see* 8 C.F.R. § 236.1(d), but discretionary decisions
22 granting or denying bond are not subject to judicial review, *see* § 1226(e).”); 8 U.S.C. § 1226(2)

01 (“The Attorney General’s discretionary judgment regarding the application of this section shall
02 not be subject to review. No court may set aside any action or decision by the Attorney
03 General under this section regarding the detention or release of any alien or the grant,
04 revocation, or denial of bond or parole.”).

05 Petitioner further complains that the bond hearing should not have been conducted by
06 the same judge who will make the ultimate removal determination. Dkt. 3 at 1-2. However,
07 “there is nothing improper with the same IJ presiding over both the removal and bond
08 proceedings,” *Dela Cruz v. Napolitano*, 764 F. Supp. 2d 1197, 1204 (S.D. Cal. 2011) (citing
09 *Joseph v. Holder*, 600 F.3d 1235, 1242 (9th Cir. 2010) (noting “the IJ properly presided over
10 both [the removal and bond] proceedings”)). Finally, petitioner maintains that the burden
11 should have been on the government to establish that a bond was not warranted. Dkt. 3 at 1-2.
12 To the contrary, the law is clear that at a bond redetermination hearing, the burden is on the
13 detainee to show he should be granted a bond. *Matter of Guerra*, 24 I&N Dec. at 40; *Matter of*
14 *Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *see also Zadvydas v. Davis*, 533 U.S. 678, 692
15 (2001) (noting that during administrative proceedings “the alien bears the burden of proving he
16 is not dangerous”).

17 In sum, although bond was denied, the Court finds that petitioner’s procedural due
18 process rights were satisfied. Petitioner received the individualized determination to which he
19 is entitled under § 1226(a). Because petitioner’s detention is authorized by 8 U.S.C. § 1226(a)
20 and he has been afforded a proper bond hearing before an IJ, petitioner’s claim that his
21 detention without bond is a violation of due process must be denied. *See Demore v. Kim*, 538
22 U.S. 510, 523, 531 (2003) (aliens may be detained for the brief period necessary for their

01 removal proceedings).

02 IV. CONCLUSION

03 For the foregoing reasons, the Court recommends that petitioner's habeas petition be
04 DENIED, Dkt. 3, respondent's motion to dismiss be GRANTED, Dkt. 8, and this matter be
05 DISMISSED with prejudice.

06 A proposed order accompanies this Report and Recommendation.

07 DATED this 28th day of January, 2014.

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10 Mary Alice Theiler
11 Chief United States Magistrate Judge
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